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Federal Communications Commission
Office of the Secretary

December 1, 1992

BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Implementation of the Cable Television
Consumer Protection and Competition
Act of 1992--Cable Home Wiring
MM Docket No. 92-260

Dear Ms. Searcy:

Please find enclosed on behalf of the City of New York, an original and 11 copies of Comments of the City of New York filed in MM Docket No. 92-260.

Any questions regarding the submission should be referred to the undersigned.

Sincerely,



Bruce A. Henoch

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Implementation of the)
Cable Television Consumer) MM Docket No. 92-260
Protection and Competition)
Act of 1992)
)
Cable Home Wiring)

COMMENTS OF THE NEW YORK CITY
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

The New York City Department of Telecommunications and Energy ("City of New York" or "City") submits these comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/}

I. INTRODUCTION

On November 5, 1992, the Federal Communications Commission ("Commission") adopted a Notice of Proposed Rulemaking in this proceeding, proposing to prescribe cable home wiring rules as mandated by Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992.^{2/} Section 16(d) requires the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates

1/ Implementation of the Cable Television Consumer Protection and Competition Act of 1992 -- Cable Home Wiring, FCC Rcd ____ (1992) (hereinafter "Notice").

2/ Pub. L. No. 102-385, 102 Stat. ____ (1992)(hereinafter "Cable Act of 1992").

service, of any cable installed by the cable operator within the premises of such subscriber."3/

As the Commission notes, the legislative history of Section 16(d) "appears to favor the Commission fashioning rules that would enable the subscriber to acquire cable home wiring upon termination of service."4/ In adopting Section 16(d), Congress charged the Commission with prescribing such rules to serve two primary objectives: (1) enable consumers to avoid any disruption or property damage the removal of wiring by operators may cause; and (2) foster competition in the multichannel video programming distribution market by permitting consumers to avoid the cost and inconvenience of having new wiring installed when subscribing to the service of an alternative provider.5/

The City of New York comments herein on several issues in this proceeding as these issues may affect cable subscribers in an urban market. The City supports an approach that we believe serves not only the above-stated Congressional objectives, but also serves both the goal of the Cable Act of 1992 to ensure reasonable subscriber rates and the Commission's goal to

3/ Section 16(d), to be codified at 47 U.S.C. Section 544(i).

4/ Notice at para. 2.

5/ See H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) (hereinafter "House Report") at 118; S. Rep. No. 92, 102d Cong., 1st Sess. (1991) (hereinafter "Senate Report") at 23. See also 138 Cong. Rec. S400 (January 27, 1992) (Statement of Senator Ford) ("In an effort to provide competition, the city of Glasgow [Kentucky] built another cable system. The other cable system would go into cable customer's homes and pull out all of the wiring in an attempt to keep customers from changing over to the city-owned cable systems, needless to say, cable customers were not happy with the idea that their walls and carpeting could be harmed just to change the cable system. I believe that once the cable wiring is in the home, it is the property of the cable customer, not the company.")

avoid adopting rules that "discourage cable investment in continuing to extend service to unwired homes."6/ Specifically, the City recommends that the Commission adopt rules by February 2, 1992 protecting subscribers from the disruption caused by the removal of wiring within the subscriber's home. In connection with the implementation and administration of the rate regulation provisions of the Cable Act of 1992, the Commission should collect and analyze detailed information on cable operator wiring cost recovery methods. Once that analysis is completed, the Commission should consider whether it is necessary to modify its home wiring rules to ensure that the competing interests in this proceeding are properly balanced.

In these comments, the City also addresses the definition of home wiring and cable operators' signal leakage and maintenance responsibilities. In addition, in the following background section, the City describes cable wiring practices and issues in New York City.

II. BACKGROUND

In New York City, cable operators use different methods to install wiring depending on the type and size of the building. Mid-sized multiple dwelling unit buildings in the City are usually wired for cable service externally. Cable service is delivered to junction boxes mounted on the sides of the building or on the rooftop. Bundles of drop cables, cut to prefabricated lengths, extend up or down the building exterior from the junction boxes (taps), and are left in a coiled loop just outside the selected apartment windows on each floor. The

6/ Notice at para. 2.

installer connects service by drilling through the wall or window sill, pulling in the coiled drop cable and connecting it to cable running along baseboard molding to the television set or cable converter box.

High rise multiple dwelling unit buildings are usually wired internally for cable service although some high rise buildings are wired externally as described above. Cable service is delivered to each of the floors of the building through stairwells. Main riser cables provide the service to junction boxes usually located on each floor. Drop cables for each apartment ("home-run cable grouping") are installed in cove molding, extending from the junction box to each apartment location in the public hallway. The installer completes the connection by drilling a hole through the cove molding into the apartment and running a cable between the hallway "home-run" wiring and the television set or cable converter box.

In some multiple dwelling unit buildings in New York City, cables were installed in vertical conduits or closets using a "loop-through" method, where one apartment's service feeds service to another apartment. Under current franchise requirements, this method of wiring is prohibited. Cable operators now are required to install wiring in apartment buildings and other multiple dwelling units so that the wiring is accessible to the operator from public areas such as hallways and stairwells. This method facilitates maintenance and servicing by making access to individual units unnecessary, and also decreases the likelihood of tampering.

Private homes in New York City are generally serviced by use of aerial drops from poles or other buildings or from

underground cabling by way of vaults or pedestals. The drop cable usually attaches to the home at a grounding block before entering the home.

In the City's experience, the disposition of cable home wiring after termination of service has not been an issue of concern to most New York City cable subscribers. Cable operators in the City generally do not remove their wiring when subscribers terminate service. (Although operators will physically "terminate" the line at the tap if required to prevent signal leakage or theft of service.) The Department of Telecommunications and Energy's Consumer Services Division, which handles complaints and inquiries from the over one million cable subscribers in New York City, has received very few questions or complaints regarding the removal of wiring.^{7/} Some disputes, however, have arisen in the City recently concerning the ownership and use of wiring -- both "home" wiring and common wiring -- in multiple dwelling units where a second multichannel video programming distributor has begun to serve consumers. (These disputes have not involved the removal of home wiring by cable operators.) Wiring access disputes may increase as competition develops in the multichannel video programming distribution market.

III. DISCUSSION

A. Subscriber Acquisition of Cable Home Wiring

The cable home wiring provision in the Cable Act of 1992 directs the Commission to prescribe rules "that would enable the

^{7/} The Division handled over 4200 complaints and inquiries from cable subscribers last year.

subscriber to acquire cable home wiring upon termination of service."8/

The transfer of ownership or any other action which affects the disposition of wiring installed by cable operators raises, as the Commission notes, the issue of cost recovery and its impact on subscriber rates. In the Notice, the Commission specifically questions how it should "set limits on the amount that can be charged to subscribers for their cable home wiring and the extent to which they have in fact paid for such wiring at the time of installation."9/

The City recommends that the Commission adopt rules which protect subscribers from the disruption and expense caused by the removal of wiring within the subscriber's home. As discussed in detail in the comments filed by the Local Governments in this proceeding, the Commission should establish a presumption that the cable operator has recovered its home wiring costs if:

- a) the subscriber has paid an installation fee or the installation fee was waived by the cable operator;
- b) the subscriber has maintained cable service for a reasonable period, such as one year or more; or
- c) the franchise agreement specifies a reduced installation fee or no installation fee.^{10/}

In these circumstances, the home wiring should become the property of the subscriber upon termination of service.

8/ Notice at para. 2.

9/ Notice at para. 5.

10/ See Comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors and the National Association of Counties ("Local Governments"), dated December 1, 1992, in MM Docket No. 92-260.

In connection with the implementation and administration of the rate regulation provisions of the Cable Act of 1992, the Commission should collect and analyze detailed information on cable operator wiring cost recovery methods. (An adequate record may not be established in this proceeding given the proceeding's expedited time schedule.) Once that analysis is completed, the Commission should consider whether it is necessary to modify its home wiring rules to ensure that the competing interests in this proceeding are properly balanced.

B. Cable Home Wiring Definition

Congress in no ambiguous terms limited the applicability of the rules the Commission is mandated to adopt by Section 16(d) to home wiring, i.e., wiring within the premises of an individual subscriber. Congress expressly noted that the section "applies only to internal wiring contained within the home and does not apply to any of the cable operator's other property located inside the home (e.g., converter boxes, remote control units, etc.) or any wiring, equipment or property located outside of the home or dwelling unit."^{11/} Further clarifying this point, Congress noted that in the case of multiple dwelling units, the section "is not intended to cover common wiring within the building, but only the wiring within the dwelling unit of individual subscribers."^{12/}

Although the definition is straight-forward, the City believes it is important to address one possible area of

^{11/} House Report at 118.

^{12/} House Report at 119.

ambiguity, i.e., the treatment of "loop-through" riser cable installed by operators in subscriber premises through closets or vertical conduits. The City recommends that the Commission confirm that this cable should be treated as part of the operator's distribution plant, just as "home-run" cables in public hallways and coiled drop cable loops on building exteriors will be treated at this time.

C. Cable Operator Signal Leakage
and Maintenance Responsibilities

Congressional intent regarding the obligation of cable operators to continue to be responsible for preventing signal leakage is clear. The House Report states:

Cable operators continue to have legal responsibility to prevent signal leakage, since improper installation or maintenance could threaten safety services that operate on critical frequencies. Nothing in this section should be construed to create any right of a subscriber to inside wiring that would frustrate the cable operator's ability to prevent or protect against signal leakage during the period the cable operator is providing service to such subscriber.^{13/}

The House Report also states that Section 16(d) "does not address matters concerning the cable facilities inside the subscriber's home prior to termination of service. In this regard, the Committee does not intend that cable operators be treated as common carriers with respect to the internal cabling installed in subscriber's homes."^{14/} In so defining the

^{13/} House Report at 119.

^{14/} House Report at 118-19.

the status of wiring which is still in service, Congress clarified that a cable operator is responsible for maintaining the subscriber's wiring until the subscriber terminates service.

IV. CONCLUSION

In conclusion, the City of New York respectfully urges the Commission to adopt the City's recommended approach. We believe that approach serves not only the Congressional objectives of protecting consumers from disruption and fostering competition, but also serves both the goal of the Cable Act of 1992 to ensure reasonable subscriber rates and the Commission's goal to avoid adopting rules that "discourage cable investment in continuing to extend service to unwired homes."

Respectfully submitted,

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TELECOMMUNICATIONS AND ENERGY

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